

Applicant : Robert Johan Joseph Hageman, et al.
Serial No. : 10/518,623
Filing Date: July 11, 2005
Page 7

REMARKS

Claims 1 and 18 have been amended. Support for the amendment to claim 1 may be found at, *inter alia*, page 9, lines 26-27, page 10, lines 1-6, and page 15, lines 11-13. Support for the amendment to claim 18 may be found at, *inter alia*, page 13, lines 7-10. Claims 1 and 18-25 remain pending in the application. Applicants submit that the amendments to claims 1 and 18 raise no issues of new matter and are fully supported by the specification as filed. Applicants respectfully request that this Amendment be entered.

The Examiner rejected claims 1 and 18-25 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Pat. 4,582,807 to Veeraraghaven (hereinafter Veeraraghaven) in light of information available from the website:

<http://www.scientificpsychic.com/fitness/carbohydrates.html>.

The Examiner asserts that this reference teaches all of the claim elements.

Applicants maintain that claim 1 as amended and 18-25 are patentable over Veeraraghaven. Unlike the present invention, the problem to be solved by Veeraraghaven is the provision of a synthetic cultivation medium suitable for the growth of mycobacteria and in particular leprosy and tubercle bacilli

Applicant : Robert Johan Joseph Hageman, et al.
Serial No. : 10/518,623
Filing Date: July 11, 2005
Page 8

(Veeraraghaven, Col. 2, lines 60-63). To that end, Veeraraghaven discloses a growth medium broth, that may contain L-serine and glycocytamine among numerous other compounds, which is suitable for the cultivation of *mycobacteria* (Veeraraghaven, claim 1). In contrast, the present invention concerns a pharmaceutical composition for use in mammals that improves creatine response and methylation reaction capacity of the subject mammal. Unlike the present invention, Veeraraghaven does not disclose a nutritional or pharmaceutical composition that is suitable for use in *mammals*. Moreover, as noted by the Examiner, Veeraraghaven explicitly states that the culture medium is free of protein (Veeraraghaven, Col. 3, line 17; December 24, 2008 Office Action, page 6, first paragraph). In contrast, the present invention, as recited in amended claim 1, explicitly requires the presence of proteins, which applicants advantageously found acts as an effective aid for the metabolism of energy (page 6, lines 23-25). Accordingly, the features of the present invention as recited in amended claim 1 are not found in the teachings of Veeraraghaven.

Claim 1 has been amended to specify that the composition contains a protein fraction containing peptides and proteins and is suitable for use in mammals. In view of the amendment,

Applicant : Robert Johan Joseph Hageman, et al.
Serial No. : 10/518,623
Filing Date: July 11, 2005
Page 9

Applicants submit that independent claim 1 defines patentable subject matter over Veeraraghavan. Claims 18-25 depend from claim 1 and are also submitted to define patentable subject matter at least for the reasons set forth above. Reconsideration and withdrawal of these rejections is respectfully requested.

Claim 18 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner alleges that the recitation the "molar amount of energy metabolism precursor lies within the range of from 0.1 to 10 times the excess of L-serine minus glycine" was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The Examiner noted that the specification discussing support for the limitation states "the molar amount of 'energy metabolism precursor' to be daily administered lies within the range of from 0.1-10 time the excess of L-serine **versus** glycine. . ." (page 13, lines 7-10). In response, applicants respectfully traverse the Examiner's rejection. However, in order to expedite prosecution and without conceding the correctness of the Examiner's position,

Applicant : Robert Johan Joseph Hageman, et al.
Serial No. : 10/518,623
Filing Date: July 11, 2005
Page 10

applicants have hereinabove amended claim 18 to recite, in relevant part, that the molar amount of energy metabolism precursor to be daily administered lies within the range of from 0.1-10 times the excess of L-serine **versus** glycine, as stated in the specification (page 13, lines 7-10). Applicants respectfully request withdrawal of the Examiner's objection.

In summary, Applicants submit that they have addressed and overcome all of the objections and rejections stated in the Office Action, and that the application now is in condition for allowance. Applicants request notice to this effect at the Examiner's earliest convenience.

Applicants, through the undersigned attorney, hereby petition the Commissioner of Patents to extend the time for responding to the Office Action dated December 24, 2008 for three months from March 24, 2009 to June 24, 2009.

Submitted herewith is a check for \$1,110.00 to cover the cost of this extension.

No fee other than the \$1,100 extension of time fee is believed to be required in connection with the filing of this

Applicant : Robert Johan Joseph Hageman, et al.
Serial No. : 10/518,623
Filing Date: July 11, 2005
Page 11

Communication. However, the Commissioner is hereby authorized to charge any fees required in connection with the filing of this Communication to Deposit Account No. 03-3125.

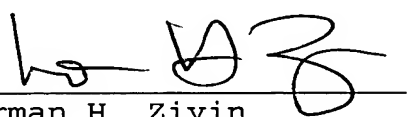
Respectfully submitted,

Dated: June 23, 2009

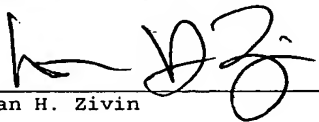
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

Norman H. Zivin

Date


Norman H. Zivin
Reg. No. 25,385
COOPER & DUNHAM LLP

Customer Number 23,432
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400
Attorney for Applicant

 6/23/09